

In the Matter of Investigator, Communicable Diseases, (C0483E),
Middlesex County
DOP Docket No. 2004-3780
(Merit System Board, decided December 1, 2004)

The appointing authority requests permission not to make an appointment from the certification for Investigator, Communicable Diseases (C0483E), Middlesex County.

The record reveals that on December 16, 2002, the appointing authority provisionally appointed Pravin Trivedi pending open-competitive examination, to the subject title. The examination was announced with a closing date of June 11, 2003 and was administered as an evaluation of education and experience. The examination resulted in the promulgation of an eligible list of seven individuals effective August 28, 2003, and which expires on August 27, 2006. It is noted that the Department of Personnel's (DOP) Division of Selection Services determined that Mr. Trivedi was ineligible for the subject examination on the basis that he was below the minimum requirements in experience.¹ DOP records indicate that Mr. Trivedi did not file an appeal of this determination. On November 10, 2003, a certification was issued containing the names of the seven eligibles from the list. It is also noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration.

Subsequently, the appointing authority requested an appointment waiver. In support of its request, the appointing authority explained that the position occupied by Mr. Trivedi was a grant-funded position that is contingent upon the individual serving in the position being fluent in multiple Asian Indian dialects. The population targeted by the grant is Asian Indians living in Middlesex County affected by Tuberculosis. The appointing authority acknowledges that it did not provide the DOP with this position requirement at the time of the position posting. Accordingly, the appointing authority asserts that it is unable to hire a person for the position who does not meet the grant criteria. Further, it is noted that Mr. Trivedi continues to serve in the position.

The appointing authority's request for an appointment waiver was acknowledged by the DOP, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048.

CONCLUSION

¹ The examination announcement for the title of Investigator, Communicable Diseases requires an applicant to demonstrate one year of investigative experience. A review of Mr. Trivedi's examination application reveals that Selection Services credited Mr. Trivedi with nine months of applicable experience based on his service as Investigator, Communicable Diseases, with Middlesex County and found that he was lacking three months of applicable experience.

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made by the Commissioner of Personnel for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Mr. Trivedi to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver. The appointing authority explained that the position was a grant-funded one, which requires the employee serving therein to be fluent in multiple Asian Indian dialects. The appointing authority also acknowledges that it did not inform the DOP of this requirement at the time it requested an examination for the subject title. Under these circumstances, the Board finds that the appointing authority has presented adequate justification for an appointment waiver.

Although the appointing authority's petition for a waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the DOP for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the merit system are two of the primary activities of the DOP, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. Therefore, although the appointing authority has shown sufficient reason for not making an appointment from the subject eligible list at the present time, under these circumstances, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. Thus, although the request for a waiver is granted, it is appropriate that the appointing authority be assessed for the costs of the selection process.

Additionally, the Board recognizes that this is a particularly unique situation. Ordinarily, the Board will only grant an appointment waiver where an appointing authority has vacated or abolished the position at issue. However, under these circumstances, the Board recognizes that it would not be prudent to require the appointing authority to terminate Mr. Trivedi from his position. On the other hand, Mr. Trevedi cannot remain in a position he was determined to be ineligible for and for which there is an existing list. It is noted that based on his continued service in the title of Investigator, Communicable Diseases, Mr. Trevedi presently possesses sufficient applicable experience to qualify for an examination for this title. Accordingly, the Board finds that it is appropriate to have Selection Services announce a new examination including, as an additional requirement, the ability to speak multiple Asian Indian dialects. It is ordered that any list resulting from this new announcement be consolidated with the existing list (C0483E). *See N.J.A.C. 4A:4-3.5.* It is also ordered that future certifications be issued with eligibles on the existing list ranked above those on the new list, and that eligibles on the existing list be afforded the opportunity of demonstrating that they possess the ability to speak multiple Asian Indian dialects prior to any eligibles on the new list being considered for appointment. In this regard, upon issuance of any new certification of the consolidated list, the appointing

authority should inform interested eligibles that they will be required to demonstrate the ability to speak multiple Asian Indian dialects as a condition of employment.

ORDER

Therefore, it is ordered that the request for the waiver of appointment requirement be granted. Additionally, the Board orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

Further, the Board orders a new examination for the position of Investigator, Communicable Diseases be announced as set forth above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.